

(2013) 08 P&H CK 0892

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No's. 8010 and 14496 of 2013

Shri Krishan Educational Trust
(Regd.) and Another

APPELLANT

Vs

Kurukshestra University and
Others

RESPONDENT

Date of Decision: Aug. 21, 2013

Citation: (2014) 1 SCT 100

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Harkesh Manuja and Mr. Manoj Bajaj, for the Appellant; A.S. Virk, Advocate for Respondent Nos. 1 and 2, Mr. N.S. Shekhawat, Advocate for Respondent Nos. 3 and 4 and Mr. Amit Rao, Advocate, for the Respondent

Judgement

Rakesh Kumar Jain, J.

This order shall dispose of two writ petitions bearing CWP Nos. 8010 & 14496 of 2013. In CWP No. 8010 of 2013, the petitioners have challenged the proceedings of disaffiliation on the basis of resolution no. 51 dated 28.03.2012, resolution no. 15 dated 22.03.2013, orders dated 29.03.2013 and 03.04.2013 withdrawing the provisional affiliation, whereas in CWP No. 14496 of 2013, the petitioners have challenged order dated 11.04.2013 whereby request of the petitioners for grant of provisional affiliation for additional courses (i) M. Tech. (Civil Engineering), (ii) increase of intake in B. Tech. (Civil) 60 to 120 and (iii) M. Tech. (CSE) 18 to 24 and extension in provisional affiliation for the academic session 2013-14 has been rejected. The basis for the order dated 11.04.2013 is the order dated 29.03.2013 by which it has been decided by the Executive Council of the University to withdraw provisional affiliation of the petitioners for the academic session 2013-14. Thus, both the writ petitions are interconnected and are being decided together with this common order. However, the facts are extracted from CWP No. 8010 of 2013. The skeletal facts of the case, as projected by counsel for the petitioners, is that the petitioner-institution has been given approval by the AICTE for the academic session

2013-14. The petitioner-institute is also required to get annual affiliation from respondent-University, however, on some complaint, inquiry was initiated and the report dated 07.12.2011 was submitted to the University, who placed it before its Executive Council for consideration. The said report was considered by the Executive Council and vide its resolution no. 51 dated 28.03.2012, it noticed non-compliance/violation of clause 4(d) of Appendix-I under Ordinance-XVI of University Calendar Volume-I, 2009 and of giving evasive reply to the show cause notices/letters. However, the Executive Council resolved to initiate the proceedings of disaffiliation against the petitioner-institute w.e.f. the academic session 2012-13 as contained under Clause 22 of Ordinance-XVI of the University Calendar Volume-I, 2009. Pursuant to the recommendations of the Executive Council, a show cause notice dated 25.04.2012 was issued by respondent no. 1 to the petitioner-institute in which it was averred that "you are accordingly informed that before the recognition, granted to your institute is withdrawn in whole by declaring your institute as disaffiliated w.e.f. the session 2012-13, under Clause 21 & 22 of the Ordinance-XVI, a registered notice for disaffiliation served upon you in terms of decision of Executive Council as per findings of the Enquiry Report dated 07.12.2011, with the request to explain, as to why disaffiliation proceedings be not initiated against your Institute w.e.f. the session 2012-13 under Clause 22 of the Ordinance-XVI "Recognized Colleges", within ten days of the issue of this registered notice, for further consideration by the Executive Council".

2. The petitioners were aggrieved against the action of respondent no. 1, consequently, filed CWP No. 8140 of 2012 for issuance of a writ in the nature of certiorari for quashing resolution no. 51 dated 28.03.2012, i.e. the recommendation of the Executive Council whereby it resolved to disaffiliate the petitioners for the academic session 2012-13. The petitioners also sought quashing of the show cause notice dated 25.04.2012 regarding disaffiliation of the petitioners for the academic session 2012-13. Initially, the operation of the show cause notice dated 25.04.2012 was stayed by this Court on 02.05.2012 but ultimately the writ petition was disposed of being pre-mature on the ground that it had approached the Court only against the show cause notice with regard to disaffiliation. It was observed that respondent no. 1 shall offer an opportunity to the petitioners to file the reply and consider the same in accordance with law.

3. It is not disputed that the petitioners had filed two replies on 07.05.2012 and 19/26.10.2012 to the show cause notice dated 25.04.2012.

4. On 22.03.2013, resolution no. 15 was passed by the Executive Council referring to replies dated 07.05.2012 and 19/26.10.2012 preferred against the show cause notice dated 25.04.2012. The Executive Council then observed that the Inquiry Committee recommended certain measures to be taken against the petitioners, vide its report dated 13.02.2013.

5. It referred to parawise recommendations of the report dated 13.02.2013 of the Inquiry Committee in reference to the Executive Council Resolution No. 1 dated 28.03.2012 and replies of the Institute dated 07.05.2012 and 19/26.10.2012.

6. The net result was that the affiliation was withdrawn. Thereafter, the impugned order dated 29.03.2013 has been passed which is again based upon the show cause notice dated 25.04.2012 and the Executive Council resolution no. 1 dated 28.03.2012. In this order, the Committee had found three gross irregularities on the part of the Institute.

7. Counsel for the petitioners submits that the Executive Council has taken the first decision on 28.03.2012 to initiate proceedings against the petitioners under Clause 4(d) of Appendix-I under Ordinance-XVI of University Calendar Volume-I, 2009 and on the ground of evasive replies, meaning thereby rest of the recommendations contained in the inquiry dated 07.12.2011 were not found favour with the Executive Council and were deemed to have been dropped. It is further submitted that as per order dated 29.03.2013, the action has been taken against the petitioners on the basis of inquiry report dated 13.02.2013, notice of which was neither a part of the show cause notice nor the petitioners were ever associated in the said alleged inquiry dated 13.02.2013. It is submitted that since the show cause notice was not issued pursuant to the inquiry report dated 13.02.2013, the petitioners have been deprived off its legal right of putting forward its stand and the impugned order has been passed on the basis of inquiry report dated 13.02.2013 in which they were not associated.

8. The next argument of the counsel for the petitioners is that Clause 23 and 24 of the Ordinance-XVI of University Calendar Volume-I, 2009 which has been examined by the Executive Council while considering the replies of the petitioners to the show cause notice dated 25.04.2012 are regarding approval/recognition and affiliation by the University of the Degree Course which is run by the University or affiliated colleges but it does not pertain to the technical courses which are being run by the petitioners and is approved and recognized by the AICTE.

9. Counsel for the respondent-University has argued that the proceedings were initiated against the petitioners on the basis of a complaint received on 18.08.2011. The petitioners were asked to file their comments within 3 days but since the comments were not filed, they were again required to submit their reply by 26.08.2011. However, the petitioners submitted evasive reply dated 02.09.2011 and vide letter dated 10.09.2011, the respondents again asked the petitioner to submit detailed reply to the specific issues by 20.09.2011. On 21.09.2011, the petitioners submitted the reply but since the reply was found to be evasive, a show cause notice was issued to the petitioners on 27.09.2011 to which reply was filed on 03.10.2011. University appointed four members committee to inquire into it and the Committee gave a questionnaire to the petitioners on 18.11.2011 to which reply was filed on 26.11.2011. On the basis of the reply etc., the inquiry committee submitted its report

on 07.12.2011 which was put up before the Executive Council of the University who had taken a decision on 28.03.2012 vide its item no. 51 and resolved to initiate proceedings of disaffiliation against the petitioners w.e.f. 2012-13 in terms of Clause 22 of Ordinance-XVI of the University Calendar, Volume-I, 2009. On 25.04.2012, a show cause notice was issued to the petitioners in terms of the decision of the Executive Council which was challenged by the petitioner by way of CWP No. 8140 of 2012 but the same was dismissed on 24.09.2012 being pre-mature. Thereafter, the petitioners submitted two replies to the show cause notice dated 25.04.2012 for which a four members committee was appointed to conduct the inquiry who had found certain deficiencies and recommended for disaffiliation. After receiving the inquiry report dated 13.02.2013, vide impugned order dated 29.03.2013, the order of disaffiliation was communicated to the petitioners. Thereafter, on 19.05.2013, the petitioner-institute applied for grant of provisional affiliation for 3 additional courses viz. (i) M. Tech., ECE (18 Seats), (ii) M. Tech., M.E. (18 seats) and (iii) B. Tech., EE (60 seats) for 2012-13. The petitioner-institute also filed CWP No. 23438 of 2012 seeking provisional affiliation for 3 additional courses which was disposed of with directions to the University to take final decision on the application dated 19.05.2012 as well as on the disaffiliation on the show cause notice dated 25.04.2012 within 6 weeks. As a result thereof, on 03.04.2013, the application dated 19.05.2013 for seeking provisional affiliation for 3 additional courses was rejected on the basis of the order dated 22/29.03.2013.

10. Counsel for the respondent-University has submitted that the petitioner is a trust and as per Clause 4(d) of Appendix-I under Ordinance-XVI of University Calendar Volume-I, 2009, it is obliged to submit a statement of the annual income and expenditure of the Trust to the Vice Chancellor which has not been done by it and also that the petitioners have been giving evasive replies throughout whenever it was called upon in the past. It is, however, not denied that after the replies to the show cause notice dated 25.04.2012 were filed on 07.05.2012 and 26.10.2012 by the petitioners, when the inquiry was conducted by a four members committee who had submitted its report dated 13.02.2013, the petitioners were not associated in the said inquiry proceedings.

11. I have heard learned counsel for the parties and on perusal of the record, it has been found that the dispute in this case has started on a complaint of non-teaching ex-employees of the petitioner-institute about which the University had given notice to the petitioners and replies were sought time and again and, thereafter, the inquiry was handed over to a four members committee appointed by the University headed by the Dean, Faculty of Engineering & Technology, Kurukshetra University, Kurukshetra. The said Inquiry Committee submitted its report on 07.12.2011 and after taking legal opinion, the matter was placed before the Executive Council of the University for the purpose of approval. The Executive Council considered the report of the inquiry committee and mainly observed as under:-

The Council after going through the recommendations of the Inquiry Committee took a serious note of non-compliance/violation of clause 4(d) of Appendix-I under Ordinance-XVI of University Calendar Volume-I, 2009 and of giving evasive replies to the show cause notices/letters.

12. Acting on the basis of the aforesaid order of the Executive Council, a show cause notice was given by the University to the petitioners as to why it should not be disaffiliated for the session 2012-13. The said show cause notice was challenged by the petitioner by way of CWP No. 8140 of 2012 in which initially the stay was granted on 02.05.2012 but the petitioners also filed reply to the show cause notice on 07.05.2012. Consequently, the CWP No. 8140 of 2012 was dismissed vide order dated 24.09.2012 holding it to be pre-mature as it has been filed only against the show cause notice and not against any adverse order.

13. After the dismissal of the writ petition on 24.09.2012, the petitioner-institute submitted another detailed reply on 19/26.10.2012 explaining each and everything therein. According to the respondent-University, the show cause notice and the replies dated 07.05.2012 and 26.10.2012 was put up before a four members committee for the purpose of inquiry. The said four members committee was comprising of (i) Dean, Faculty of Engineering & Technology, K.U. Kurukshetra, (ii) Dean, Research & Development, (iii) Dean, Faculty of Law and (iv) Dr. B.S. Bodla Institute of Management Studies, K.U.K.. The Inquiry Committee held meetings in the office of the Dean, Faculty of Engineering, K.U.K. and after going through the replies and the show cause notice etc. gave its report on 13.02.2013. On the basis of the said report, resolution no. 15 was passed by the Executive Council of the University in which it has been observed that "considered the reply dated 07.05.2012 and 26.10.2012 as per annexure 15 (1-141) received from Shri Krishan Institute of Engg. & Tech., Rattan Dera Road, Kurukshetra against Show Cause Notice as per annexure 15(142-144) served upon the Institute dated 25.04.2012 in pursuance of E.C. Resolution No. 51 dated 28.03.2012; the observation/recommendations of the Inquiry Committee constituted by the University as per annexure 15 (145-147); and the legal opinion obtained from the University Counsel dated 08.03.2013 as per annexure 15 (145-149). The aforesaid resolution no. 15 is, thus, the basis of the order dated 29.03.2013. As a matter of fact, the Executive Council recommended action against the petitioners vide resolution no. 51 only on 2 grounds, namely, for violation of Clause 4(d) of Appendix-I under Ordinance-XVI of University Calendar Volume-I, 2009 and for giving evasive replies to the show cause notice, but in the show cause notice dated 25.04.2013, 5 points were raised before the petitioners which are reproduced here-as-under:-

1. Change the name on the letter head of the Institute from Shri Krishan Institute of Engineering & technology, Kurukshetra to Shri Krishan Dev Bhoomi Institute of Engineering & Technology, Kurukshetra without getting approval from the Competent Authority.

2. Non compliance/violation of clause 4(d) printed at page-55 and clause-12 printed at page-41 of Appendix-I under Ordinance-XVI of University Calendar Volume-I, 2009.

3. Transfer of fee collected from the studies of Shri Krishan Institute of Engineering & Technology, Kurukshetra to Head Office at Dehradun.

4. Giving evasive replies to the Show-Cause Notices/letters of the University by ignoring the specific queries in the Show-Cause Notice/letters.

5. Any other point/issue brought to the notice of the committee and falls within the jurisdiction of the University Rules and Norms.

14. The petitioners filed two replies dated 07.05.2012 and 26.10.2012 and the Inquiry Committee, who had submitted its report dated 13.02.2013, made the following recommendations:-

(1) Regarding change of name the institute: The point may be dropped, in view of the satisfactory reply given by the college.

(2) (Refer point no. 2) Legal opinion may be sought regarding relationship of the members with the chairman of the trust of the Institute.

(3) (Reference point no. 3) The non-deposition of the fees received in cash in the bank as regular practice and the cash transactions is a violation of rules. The transfer of the funds from the account of the institution to Shri Krishan Education Trust and to Uttarakhand Uthan Samiti is also not as per rules.

(4) The practice of evasive reply is still continuing which is obvious from the observation no. 4.

(5) (Reference point no. 5) (a) (i) & (ii) The committee is not satisfied with the reply. There is a clear violation of rules regarding the payment of salary/wages to teaching and non-teaching staff, the required approval of the appointments from the university, qualification of the staff as per norms, maintaining of service books etc.

(iii) (b) The non-submission of CLU certificate & no objection from the competent authority for constructing building/additional building is also a clear violation of rules. However, the matter being sub judice may be kept pending.

15. However, when the impugned order is passed, reference has been made to only 3 irregularities committed by the petitioners, which read as under:-

(i) Non-deposition of the fees received in cash in the bank as regular practice and the cash transactions is a violation of rules. The transfer of the funds from the account of Shri Krishan Institute of Engineering & Technology, Rattan Dera Road, Kurukshetra (managed by Shri Krishan Education Trust) to another trust at Dehradun, namely, Uttra Khand Uthan Samiti is also not as per rules.

(ii) The practice of evasive reply is continuing.

(iii) There is a clear violation of rules regarding the payment of salary/wages to teaching and non-teaching staff; the required approval of the appointments from the university; qualifications of the staff as per norms; maintaining of service books etc.

16. It is pertinent to mention that Clause (iii) in the impugned order dated 29.03.2013, which is found to be an irregularity committed by the petitioners, was not a part of the recommendation of the Executive Council in its resolution no. 51. However, the same finds mention in the recommendations of the Inquiry Committee dated 13.02.2013 and has also been made a part of the impugned order dated 29.03.2013.

17. Thus, it is apparent that the petitioners have not been given any opportunity not only to contradict the point which is part of the recommendations dated 13.02.2013 nor the petitioners were associated by the Inquiry Committee to put forward its stand. In these circumstances, I am in agreement with the arguments raised by counsel for the petitioners, de-hors all the technical pleas which have been raised by both the counsel for the parties, that the petitioners should have been given a fair chance to prove his stand before the Inquiry Committee much-less with regard to Clause (iii) which has been recommended as one of the irregularities in the report dated 13.02.2013. Keeping in view the aforesaid facts and circumstances and the principle of natural justice, which calls for an opportunity of hearing or at least an opportunity to represent, I find the impugned order to be illegal and is, thus, set aside. However, the respondents are directed to hold the inquiry once again and take a decision afresh by passing a speaking order in accordance with law, after associating the petitioners. The needful shall be done within a period of 3 weeks from today.